



November 12, 2001

Ms. Lysia H. Bowling
Assistant City Attorney
City of Temple
2 North Main
Temple, Texas 76501

OR2001-5230

Dear Ms. Bowling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154770.

The City of Temple (the "city") received a request for copies of information from all arrest, offense, and/or incident reports pertaining to a specified person. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and your arguments against disclosure.

Initially, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request. *See Gov't Code § 552.301(b)*. The city states that it received the requestor's written request for information on September 4, 2001. However, we note that the submitted information includes a letter from Jill Pickett dated August 23, 2001 which indicates that the city received the request on or before that date. Therefore, we are unclear as to when the city actually received the request for information. Accordingly, we conclude that you failed to comply with the procedural requirements of section 552.301 in requesting a decision from our office. *See Gov't Code § 552.301(b)*. Although the submitted information is, thus, presumed public, we will address the city's claim that the information is excepted from disclosure under section 552.101 of the Government Code. *See Gov't Code 552.302; see also Open Records Decision No. 150 at 2 (1977) (finding that compelling interest in*

overcoming presumption that information is public is demonstration that some other source of law makes information confidential).

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the request requires the city to compile all information relating to any arrests of the specified person. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the named individual's right to privacy to the extent that it includes arrests and investigations where the specified individual is a suspect in a case. Accordingly, we conclude that the city must withhold from disclosure any requested information relating to any arrests of the specified person pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

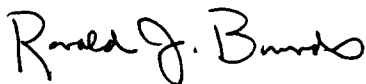
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 154770

cc: Mr. Jack H. Taylor, Jr.
Managing Director
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(w/o enclosures)